

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 2559 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.SHAH

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
1 to 5 No

GOLD MINE KNITWEAR

Versus

STRECH BENDZ

Appearance:

MR BHARGAV N BHATT for Petitioner
MR SURESH M SHAH for Respondent No. 1

CORAM : MR.JUSTICE S.D.SHAH

Date of decision: 25/09/97

ORAL JUDGEMENT

1. Admit. Mr. S.M. Shah appears and waives service of admission on behalf of respondent. With the consent of the learned advocates appearing for the parties, the matter is finally heard today.
2. This is the First Appeal preferred by the appellant - original defendant against the order passed

below Exhibit 39 in Misc. Civil Application No. 196 of 1989. It appears that a Summary Suit No. 2 of 1985 was filed in the court of 2nd Civil Judge, Senior Division, Bhavnagar to recover the principal amount of Rs. 76,060/- being the price of the goods supplied and consumed by a person to whom the goods were sold. In such Summary Suit, summons was served on the defendant on 9th of April, 1986, but, thereafter, defendant and his advocate failed to appear till 28th of April, 1986 though it is stated that Vakalatnama duly signed by some advocate from Ahmedabad was already sent to the Court. It appears that neither the defendant nor such advocate has thereafter appeared before the court which ultimately compelled the court to pass the ex parte decree on 8th of May, 1986 for the total principal amount along with the interest as prayed for. In such proceeding, the defendant has taken out the application at Exhibit 39 being Misc. Civil Application No. 196 of 1989. The said application was resisted by the other side by filing objection at Exhibit 40. In fact, the defendant has earlier filed an application seeking stay of the execution of the decree which according to the plaintiff was substantially rejected and, therefore, the defendant should not be permitted to blow hot and cold. It was also pointed out that an application was filed for set aside the ex parte decree and no action was taken thereafter till the execution proceedings commenced after the transfer of decree to the City Civil Court at Ahmedabad in Execution Petition No. 542 of 1987. It is the submission of Mr. S.M. Shah appearing for the original plaintiff that everything possible is done by the defendant in the present case to stall the recovery of the amount by the plaintiff despite the fact that goods are sold and supplied to the defendant and the defendant has consumed the goods to his own use. He, therefore, submitted before the court that in a matter of this nature, no lenient view is required to be taken by the court because the defendant has by various methods obtained sufficient time for his own fault firstly in not defending the suit and secondly thereafter in not paying the decretal amount. The fact that the decree is passed as back as 1986 cannot be disputed even by Mr. Bhargav N. Bhatt, the learned Counsel appearing for the appellant. The fact that the decree is now put to execution by transfer thereof in the City Civil Court at Ahmedabad also glares in the face of the defendant and he run away from that situation. Every attempt is made by the defendant to see that anyhow the payment of the decretal amount is thwarted, suit is not defended and having consumed the goods, the decree holder is rendered unable to recover the fruits of the decree as it is

rightly said in India that fruits of the decree holder start in India only after the decree is passed because execution of the decree is such a cumbersome job that pedigrees passed away and the decree very often is not executed. It is in such a situation that Mr. S.M. Shah has very strongly objected to the order passed below Exhibit 7 in Misc. Civil Application No. 196 of 1989 being quashed and set aside by this court. Having heard Mr. Bhargav Bhatt at length as well as Mr. S.M. Shah at length, in my opinion, interest of justice would be met if some proper directions are given which would safeguard the interest of the plaintiff as well as the defendant. This Court is informed that defendant has already deposited an amount of Rs. 40,000/- in the High Court of Gujarat. The defendant is further directed to deposit the amount of Rs. 36,000/- on or before 31st December, 1997 in the court of Second Joint Civil Judge (S.D.), Bhavnagar. The amount of Rs. 40,000/- which is already deposited in this Court, the Nazir Branch of this Court is directed through Registrar of this Court to remit the said amount to the Second Joint Civil Judge (SD), Bhavnagar before 16th of October, 1997 and the full amount being amount of Rs. 76,000/- is permitted to be withdrawn by the plaintiff i.e. respondent herein. The court shall then proceed to decide the application of the defendant, namely, the Restoration Application being Misc. Civil Application No. 196 of 1989 on merits and shall preferably decide the same by 30th April, 1988.

3. In the result, the First Appeal is allowed to the aforesaid extent only. There shall be no order as to costs.

pnn